

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BRIAN TEED,
and all others similarly situated,,

Plaintiff,

v.

JT PACKARD & ASSOCIATES, INC.,
and S.R. BRAY CORP.,
d/b/a POWER PLUS! a foreign corporation,

Defendants.

MEMORANDUM

08-cv-303-bbc

This civil action was brought by plaintiff Brian Teed against defendants JT Packard & Associates, Inc. and Power Plus! for alleged violations of federal and state overtime compensation laws. Plaintiff brought this lawsuit as a class action on behalf of two separate classes: (1) a nationwide class for violations of the Fair Labor Standards Act and (2) a Wisconsin class for violations of Wisconsin law.

Under the Fair Labor Standards Act, a district court may conditionally certify a class to allow a representative plaintiff the opportunity to send out opt-in notices for violations of the Act. 28 U.S.C. § 216; Woods v. New York Life Insurance Company, 686 F.2d 578,

580 (7th Cir. 1982). This court has adopted a two-step process for class certification under the FLSA. Sjoblom v. Charter Communications, LLC, No. 07-cv-451-bbc, 2007 WL 4560541, *7-8 (W.D. Wis. Dec. 19, 2007). The first step requires plaintiff to demonstrate that he is similarly situated to potential class members. Id. This step was completed on October 3, 2008 when I issued an order approving the parties' joint stipulation to conditional certification and for notice to be sent out to all potential class members. Dkt. ## 37-38.

After the deadline for class members to opt-in has passed and all potential class members are identified, defendant may file a motion to oppose certification of the class. Id. On December 15, 2008, the parties submitted a request to extend the deadline for certification and decertification because the parties sought to engage in settlement negotiations to avoid costly and unneeded discovery. Dkt. #50 at 2. On the same day, Magistrate Judge Stephen Crocker granted the parties' request and extended the deadlines to February 15, 2009. Dkt. #51.

The deadline has come and passed and neither party has submitted motions to certify or decertify. The failure to do so operates as a waiver of the parties' rights regarding the state and federal class actions. In other words, plaintiff has waived his right to certify a state law class for violations of Wisconsin's overtime laws and defendants have waived their right to decertify the FLSA class. Austin v. Cuna Mutual Insurance Society, 232 F.R.D. 601, 605

(W.D. Wis. 2005) (second step of FLSA conditional certification requires defendant to file motion to decertify).

Therefore, in accordance with the parties' joint stipulation to certify a nationwide class under the FLSA, plaintiff may proceed as a class representative on behalf of those individuals who opted-in to the FLSA class action by December 6, 2008. However, because plaintiff did not move to certify a state law class action by the court's extended deadline, plaintiff may proceed only on his own behalf on this claim.

Entered this 9th day of March, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge